

IN THE MATTER OF	:	BEFORE THE
ROBERT B. WILLIAMS, et al.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 05-046C

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DECISION AND ORDER

On March 6, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Robert B. Williams, Joanna K. Benedict, Barbara B. Cusack, and William I. Slade, Jr., Petitioners, for a conditional use for age-restricted adult housing in an RR-DEO (Rural Residential – Density Exchange Option Overlay) Zoning District, filed pursuant to Section 131.N.1 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Howard L. Alderman, Esquire, represented the Petitioners. Jacob Hikmat testified in support of the petition. Hugh Hill, Bill Taylor, Paul Von Stein, Robert Mentle, Marc Jordan, William Hudock, Peter Mascone, Nina Stedman, and John Stuart testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, known as 13110 Greenberry Lane, which is located in the 5th Election District on the east side of Greenberry Lane northeast of Linden Church Road and east of Maryland Route 32 in Clarksville (the “Property”). The Property is referenced on Tax Map 28, Block 9 as part of Parcel 48.

2. The Property is roughly pentagonal in shape and consists of about 50 acres. The Property is currently unimproved open crop land with some narrow perimeter vegetation and wooded areas in the westernmost portion. The Property is moderately sloped with the highest area in the east-central portion and the lowest in the west. A 50’ wide Columbia Gas easement runs from south to northeast through the site. The Property has about 1,200 feet of frontage on Linden Church Road on the south and southeast sides, and about 700 feet of frontage on Greenberry Lane on the southwest side. Greenberry Lane bisects the Property on the west side where it turns and runs north.

3. Vicinal properties are also zoned RR-DEO and include:

(a) To the north is the remainder of Parcel 48, an area of 77 acres improved with a dwelling and farm buildings.

(b) To the northeast is Parcel 414, which contains an existing single-family detached dwelling access by a driveway that runs from Linden Church Road along the east boundary of the Property. To the east of the Property is the Twelve Hills subdivision of 3-acre lots improved with various sizes of single-family detached homes.

These homes back to the Property and are accessed from Twelve Hills Road. Adjoining the Site to the southeast is Parcel 162, a triangular shaped 2.2-acre lot that is improved with a one-story single-family detached dwelling and detached two-car garage fronting on Linden Church Road. To the southeast across Linden Church Road is Parcel 189, an unimproved 5-acre lot.

(c) To the south across Linden Church Road are Parcels 175 and 176, two 5-acre lots containing single-family detached dwellings fronting on Linden Church Road. West of Parcel is Broadwater Lane.

(d) To the west of the Site is Greenberry Lane and Route 32. To the northwest are Parcels 78 and 79 which contain a gas pipeline transmission facility, an electric utility facility, and a communications tower.

4. The Petitioners propose to construct on the Property an age-restricted adult housing community consisting of 50 single-family detached dwellings. The development will be constructed under a condominium regime without individual lots. The units will be located on both sides of an elongated U-shaped internal road that will be situated in the eastern half of the site straddling the existing gas easement. The western portion of the road extends about 1,150 square feet and ends at a cul-de sac about 200 feet from the east lot line and 400 feet from the north lot line; the eastern portion of the road is about 1,100 feet long and ends in a cul-de-sac about 275 feet from the north lot line.

Each unit will be 80 feet wide and 40 feet deep with two stories and an attached two-car garage. The units will stand about 30 feet in height (measured to the peak of the roof) and, according to the conditional use plan, will be about 20 feet or less apart. The DPZ report estimates that the units will contain 6,000 square feet of floor area. Each unit

will include a driveway with parking space for two vehicles. The units will contain universal design features (see Petitioners' Exhibit 3 and Note 17 of Exhibit 1). Five of the units will be moderate income housing units.

A 1,000 square foot community building will be located on the west side of the western road approximately in the center of the Property. A swimming pool will be situated adjacent to the northwest corner of the community center and tennis courts will be installed southwest of the community center. A 6' wide paved path/exercise trail will extend from the community center and run around much of the perimeter of the site.

In addition to the 200 parking spaces provided at each unit, the development will provide a 23-space parking lot in front of the community center. Access to the Property will be gained via a wide entrance road with an optional gate from Greenberry Road in the southwest portion of the Property. A 4.5-acre septic easement is reserved for the northwest portion of the Property. A stormwater management facility will be located in the western portion of the site. The perimeter of the site is designated as a forest conservation easement." The amended conditional use plan, submitted at the hearing as Exhibit 1, indicates that 34 acres, or 68%, of the Property will be open space.

A condominium association to be established for the development will enforce the age restrictions and maintain the open space, common areas, and related improvements on the Site.

5. The 2000 General Plan designates the Property as a "Rural Residential Area" land use. The Property will be served by private community water and septic facilities. Greenberry Lane is a local road with two travel lanes and wide paved shoulders within a variable width right-of-way. Visibility from the proposed entrance road is about 500 feet

to the south and 300 feet to the north. Linden Church Road is also a local road with two travel lanes and 22' wide pavement width within a variable width right-of-way. The speed limit on Linden Church Road is 25 mph.

6. Mr. Hikmat testified that the number of bedrooms in each unit will be based upon the Health Department's determination of septic capacity and limits by covenant restrictions to be placed on the Property. He stated that trees will be planted in the forest conservation areas along the perimeter of the site in accordance with the Forest Conservation Manual. He further testified that the proposed homes will be between the sizes of the smaller homes on Broadwater Lane and the larger homes in Twelve Hills. He stated that the MIHU units will be smaller than the others, but that their size was as yet undetermined. He stated that the units will be a sufficient distance from Route 32 such that barrier walls will not be necessary.

The Petitioners stated that no dumpsters will be installed, but that trash pick-up will occur at each unit.

7. Those in opposition testified that the size, massing and density of the proposed homes are out of character with the neighborhood. They expressed concern that the 50-unit development will decrease the water supply available to their homes. They also stated that the traffic generated by the development will exacerbate the hazards of the already-dangerous intersection at Route 32. They stated that the size and design of the homes indicates that the development will generate more traffic than the typical age-restricted project.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Rural Residential Area” land use. Age-restricted adult housing developments are commonly found in residential areas and are presumptively considered compatible with residential land uses.

Nevertheless, and while the General Plan advocates the development of housing for the active senior market, it also recognizes that this market is typically seeking to “sell their large family home and yard and to purchase a smaller, easier to maintain home with a first-floor bedroom.” (General Plan, pg. 82). The Plan recommends “in order to supplement the congregate and apartment housing choices now available to seniors, the County should amend the Zoning regulations to provide other housing options for seniors, including attached and detached *single story*, single family homes. Such active senior housing developments would be age-restricted and include less extensive shared community facilities than currently required for elderly housing.” (Id., italics added).

With respect to the RR zone, the Plan recommends a more restrained approach to senior housing. “The County needs to reconsider senior housing developments that are currently allowed in the Rural West. ... the West has fewer service available and does not have transit service that could provide access to services.” (Id., pg 83).

Clearly, the General Plan contemplates that age-restricted adult housing will involve smaller-than-typical housing units to accommodate the needs of the elderly. Moreover, it clearly contemplates that detached homes should be single story. While the

Zoning Regulations do not expressly restrict detached homes to one story, it is apparent (as pointed out in the DPZ staff report) that the Regulations contemplate a distinct type of dwelling “that is *designed for* and restricted to occupancy by households having at least one member who is 55 years of age or older.”

The proposed 6,000 square foot, two story detached dwelling units are not in harmony with the concept of age-restricted adult housing contemplated by the General Plan or Zoning Regulations. Such a large unit with an expansive second floor is well beyond the size of any age-restricted adult dwelling that I have reviewed in the past four years. What’s more, the Petitioners could not specify the number of bedrooms or the use to which the large second floor space might be put. It is apparent from the evidence that these homes are not designed for the typical active senior seeking smaller quarters, but for larger households that happen to have one member who is age 55 or older. As such, the inherent intensity of the use and its impact on vicinal properties will likely be far greater than that intended by the County Council when it enacted the General Plan and conditional use regulations.

Accordingly, I find that the nature and intensity of operation are such that the use will not be in harmony with the land uses and policies indicated in the General Plan for the district pursuant to Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the

beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed age-restricted adult housing development has adverse effects in the RR zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the RR district.

For the reasons stated below, I find that the Petitioners have not met their burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with an age-restricted adult housing development in the RR district:

1. Physical Conditions. The proposed development will consist of 50 units (the maximum density allowed) that are 6,000 square feet in floor area. As such, the units are larger and designed to accommodate more occupants than the typical age-restricted adult dwelling. Because the units are more akin to a large family home, its impact with regard to noise, traffic and odors will likely be greater than those ordinarily associated with an age-restricted adult housing project. The Petitioners failed to provide a traffic study or other evidence of the potential impact of the use of the homes; indeed, they did not even indicate how many bedrooms would be located in each unit. Consequently, I find that the Petitioners have failed to present sufficient evidence as to whether the use will generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an age-restricted adult housing facility in an RR zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed dwelling units will be located in the eastern portion of the Property, which is the portion closest to the neighboring residential lots. The 80' wide and 30' tall units are larger in size and massing than any other age-restricted adult housing unit that I have reviewed in the past four years. Moreover, the units along the eastern side will be arranged in a line of 13 units 20 feet or less part, creating a visual "wall" that will stretch some 1,300 feet. This wall effect will be visible to the vicinal residential properties to the east. While the Petitioners have proposed a landscaped buffer area, they have failed to specify what type or degree of landscaping will be provided. Without a more sufficient buffer area or specific landscape screening, the appearance of the proposed dwellings will likely have a greater adverse effect on the vicinal homes than would a typical age-restricted adult development. Consequently, the Petitioners have failed to show that the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, as required by Section 131.B.2.b of the Zoning Regulations.

II. Specific Criteria for Age-Restricted Adult Housing (Section 131.N.1).

1. For the reasons stated in Section I. B.2 above, the Petitioners have failed to show that the project is designed to provide adequate buffering along the perimeter of the site, as required by Section 131.N.1.i.

ORDER

Based upon the foregoing, it is this **20th day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Robert B. Williams, Joanna K. Benedict, Barbara B. Cusack, and William I. Slade, Jr., for a conditional use for age-restricted adult housing in an RR-DEO (Rural Residential – Density Exchange Option Overlay) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.